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FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6863

DATE COMPLAINT FILED: 8/22/2014

DATE OF NOTIFICATION: 8/27/2014

DATE OF LAST RESPONSE: 10/17/2014

DATE ACTIVATED: 11/05/2014

ELECTION CYCLE: 2014

EXPIRATION OF STATUTE OF

LIMITATIONS: 10/08/2018 - 6/30/2019

COMPLAINANT:

Steve Robertson, Chairman
Republican Party of Kentucky

RESPONDENTS:

Alison for Kentucky and Robert C. Stilz III
in his official capacity as treasurer
Alison Lundergan Grimes
S.R. Holding Co. Inc., d/b/a Signature Special
Event Services

RELEVANT STATUTES
AND REGULATIONS:

52 U.S.C. § 30104(b)¹
52 U.S.C. § 30118(a)
11 C.F.R. § 100.52(d)
11 C.F.R. § 114.2(b)
11 C.F.R. § 114.2(d)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Alison Lundergan Grimes ("Grimes"), a 2014 Senate candidate in Kentucky,² her principal campaign committee, Alison for Kentucky and Robert C. Stilz III in his official capacity as treasurer ("Committee"), and S.R. Holding Co. Inc., d/b/a

¹ On September 1, 2014, the Act was transferred from Title 2 to new Title 52 of the United States Code.

² Grimes lost the general election on November 4, 2014.

1 Signature Special Event Services ("SSES") each violated the Federal Election Campaign Act of
2 1971, as amended ("Act"), when Grimes and the Committee accepted prohibited corporate in-
3 kind contributions from SSES in the form of a motor coach leased at a below market rate.

4 In a joint response, Grimes and the Committee assert that they paid SSES the normal and
5 usual lease charges for comparable commercial transportation and properly reported the
6 disbursements made in connection with the lease. Similarly, SSES asserts in its response that the
7 lease was a fair market value for the make, model, year, and condition of the leased motor coach
8 and that lease rates quoted by the Complaint were for newer and more luxurious executive and
9 entertainer coaches and therefore not comparable to the older SSES motor coach with fewer
10 amenities.

11 As set forth below, the available information provides reason to believe that the
12 Committee may have paid less than fair market value for its use and access to the motor coach at
13 issue. Accordingly, we recommend that the Commission find reason to believe that SSES made,
14 and the Committee accepted and failed to report, a prohibited corporate in-kind contribution. We
15 further recommend that the Commission authorize an investigation to obtain additional
16 information about the leasing arrangement between the Committee and SSES. We also
17 recommend that the Commission take no action at this time as to the candidate, Grimes, pending
18 the outcome of the investigation.

19 II. FACTS

20 Alison Lundergan Grimes filed a Statement of Candidacy for the 2014 Senate election in
21 Kentucky on July 16, 2013, and designated Alison for Kentucky and Robert C. Stilz III in his
22 official capacity as treasurer as her principal campaign committee. During the campaign, the
23 Committee leased a motor coach wrapped with Grimes's picture and campaign logo to transport

1 Grimes to campaign destinations across the state.³ The Complaint describes the motor coach as
2 "having a variety of daily living accommodations, such as a kitchen and sleeping quarters" and
3 asserts that Grimes had 24-hour on-call use of a motor coach between October 2013 and June
4 2014, including for a state-wide 50 county bus tour.⁴

5 The motor coach was leased to the campaign by SSES, a company owned by Grimes's
6 father, Gerald G. Lundergan.⁵ SSES states that it purchased the "pre-owned Prevost H3-45 Star
7 coach" for \$250,000 in 2013 for one of its companies, Emergency Disaster Services ("EDS"),
8 which provides mobile housing units, food and beverage services, command center and other
9 emergency assets to utility providers, nonprofit organizations and governmental agencies for
10 emergency response deployments.⁶ Lundergan reportedly offered to rent the motor coach to the
11 Committee since it needed a large vehicle to transport Grimes to campaign destinations.⁷ SSES,
12 in its response, states that the motor coach would continue to be available for lease as part of
13 EDS's fleet upon conclusion of the lease with the Committee.⁸

³ Joint Resp. at 2, Compl. Ex. G.

⁴ Compl. at 4-6. The lease arrangement appears to have extended beyond June 2014, potentially increasing the amount of any in-kind contribution from SSES to the Committee. *See* SSES Resp. at 2 ("When the lease with the Campaign concludes..."); Committee \$3,480 disbursement to SSES for transportation and fuel on October 15, 2014 (2014 Pre-General Report at 2857); Committee \$9,940 disbursement to SSES for transportation and fuel on November 14, 2014 (2014 Post-General Report at 5086).

⁵ Gerald G. Lundergan is the President of S.R. Holding Co. Inc., a corporation registered in Kentucky that rents mobile kitchens, power generators, and other equipment in connection with special events and does business as Signature Special Event Services. *See* Compl. at 1 and Ex. A; <http://www.eventservices.com>.

⁶ SSES Resp. at 2.

⁷ Joint Resp. at 1-2.

⁸ SSES Resp. at 2.

The Committee reported making the following payments to SSES in connection with its lease of the motor coach:⁹

Disbursement Date	Amount	Purpose	Disclosure Report	Page
10/08/2013	\$1,800.00	Transportation	2013 Year End	1105
10/08/2013	\$380.00	Transportation	2013 Year End	1104
10/08/2013	\$5,500.00	Bus Sign	2013 Year End	1104
03/31/2014	\$1,900.00	Fuel	2014 April Quarterly	2182
04/30/2014	\$380.00	Fuel	2014 April Quarterly	865
06/30/2014	\$1,145.00	Transportation & Fuel	2014 July Quarterly	3450
06/30/2014	\$5,334.12	Transportation & Fuel	2014 July Quarterly	3451
10/15/2014	\$3,480.00	Transportation & Fuel	2014 Pre-General	2857
11/14/2014	\$9,940.00	Transportation & Fuel	2014 Post-General	5086
TOTAL	\$29,859.12			

The Complaint argues that commercial vendors are permitted to provide services to federal campaigns but only if those services are offered in the ordinary course of the vendor's business and at the usual and normal charge.¹⁰ The Complaint also asserts that SSES does not offer the same or similar transportation services to others that they provided to Grimes.¹¹ According to the Complaint, a survey of market rates offered for similar services in Kentucky shows that the established rate for a similar motor coach rental ranges from \$1,500 to

⁹ The disbursements through June 30, 2014, are identified in the joint response. *See* Joint Resp., Ex. C. The disbursements on October 15, 2014, and November 14, 2014, occurred after the Complaint was filed. The \$5,500 payment on October 8, 2013, was made to have the motor coach wrapped with Grimes's campaign logo.

¹⁰ Compl. at 5.

¹¹ To support this assertion, the Complaint points to media reports indicating that SSES is not licensed to provide for-hire transportation services in the ordinary course of business. *Id.* at 2, 4. The Complaint further alleges that media reports and an analysis of the Committee's expenditure reports indicate that the Committee paid less than other federal campaigns for a variety of event related services – services that are largely provided to the Committee by SSES – and as such may have accepted additional prohibited corporate contributions from SSES. *Id.* at 6. Neither of the responses address this allegation.

1 \$2,000 per day,¹² well above the \$456 per day that it asserts was paid by the Committee.¹³

2 The Respondents acknowledge that SSES did not operate the motor coach for ordinary
3 commercial passenger service, and argue that there is nothing in the Act or Commission
4 regulations that requires a committee to obtain its means of transportation from a specialized
5 vendor that provides such services in the normal course of business.¹⁴ The Committee states that
6 it worked with SSES to obtain quotes from regional vendors in the business of renting
7 comparable motor coaches commercially and arrived at a rate of \$380 per day plus fuel costs.¹⁵
8 According to the Respondents, they obtained quotes from two different vendors as a means of
9 determining a normal and usual rental rate for a comparable motor coach, ranging from \$150 to
10 \$180 per day for the same make, model, and year of the motor coach owned by SSES or a
11 comparable Class A RV.¹⁶ Because neither of the quotes included the cost of the driver SSES
12 would be providing, the Committee conducted research to determine the normal and usual rate
13 for a driver and obtained a quote from a third vendor of \$200 per day.¹⁷ Respondents further
14 state that the Committee chose to pay the higher rental rate quote of \$180 per day plus the \$200

¹² *Id.* at 5; *see also* Compl., Ex. D (report of Manu Raju, "The Grimes Family Discount," POLITICO (Aug. 19, 2014)) (stating that officials from four bus companies indicated a typical daily charge of \$1,500 to \$2,000 per day to rent a similarly sized bus and that Kentucky U.S. Senator McConnell spent at least \$2,200 per day to rent essentially the same bus in August 2014).

¹³ According to the Complaint, the Committee reported expenditures totaling \$10,939, or approximately \$456 per day, associated with its lease of the motor coach between October 2013 and June 2014, in addition to a cost of \$5,500 to have the motor coach wrapped with the Committee logo and the candidate's picture. *See* Compl. at 6. The Complaint argues that it is impossible that the \$456 daily rate covers all the associated costs of the rental such as rental fee, driver fee, gratuity, fuel, hotel accommodations for driver, tolls, parking, etc. *Id.* at 6.

¹⁴ Joint Resp. at 5.

¹⁵ Joint Resp. at 2. The Complaint asserts that the Committee has been inconsistent in its public statements as to whether the daily rate includes fuel costs or not. Compl. at 7.

¹⁶ Joint Resp. at 2; SSES Resp. at 2.

¹⁷ Joint Resp. at 2.

1 per day rate for the driver, for a total of \$380 per day.¹⁸ The Respondents assert that the prices
2 quoted by the Complaint are not comparable to the older, smaller motor coach with fewer
3 amenities and features leased by the Committee.¹⁹ According to SSES, the price quotes also fail
4 to take into account the location of the eleven year-old motor coach, Lexington, Kentucky, which
5 means that there are no additional costs for out-of-state travel to and from the company's storage
6 depot nor are there costs for the driver's lodging and travel.²⁰

7 The responses do not address the Complaint's allegation that the SSES motor coach was
8 available to the Committee on a 24-hour on-call basis nor do the responses provide details
9 regarding the specific dates during which the Committee utilized the motor coach or the status of
10 the coach when it was not being utilized by the Committee.

11 III. LEGAL ANALYSIS

12 The Complaint alleges that the Committee had exclusive 24-hour use of the SSES motor
13 coach for months at below-market rates and alleges that SSES does not provide similar
14 transportation services to anyone else.²¹ The Complaint further alleges that SSES purchased the
15 "luxury motor coach" one month prior to the launch of Grimes's campaign solely to benefit
16 Grimes's campaign; therefore, the entire cost of purchasing, licensing, insuring, and operating
17 the motor coach borne by SSES directly influences a Federal election and thus constitutes a

¹⁸ *Id.*

¹⁹ Joint Resp. at 4; SSES Resp. at 2-3. Respondents further assert that the Commission, in a previous enforcement matter, has acknowledged that the age of a vehicle "may warrant a discount to the rental rate charged for the short-term rentals of presumably new, or new vehicles in relatively good repair." Joint Resp. at 4, quoting Factual and Legal Analysis at 6, MURs 6295/6307 (Sue Lowden). Respondents assert that the Lowden matter supports their position that the present matter warrants dismissal of the Complaint based on prosecutorial discretion. SSES Resp. at 3.

²⁰ SSES Resp. at 3.

²¹ Compl. at 5.

1 prohibited in-kind corporate contribution to Grimes and the Committee.²² Respondents deny the
2 allegations in the Complaint and argue that the Committee and SSES complied with the
3 Commission's rules in paying SSES the normal and usual rental charges for comparable
4 commercial transportation.²³ The joint response also argues that the speculation that SSES
5 purchased the bus solely for Grimes's use for campaigning is not sufficient to support a reason to
6 believe finding given the fact that there are no allegations that the Committee received title to the
7 motor coach, or that SSES's purchase of the motor coach was authorized or requested by the
8 Committee, both of which it says would be necessary to show that the Committee received an in-
9 kind contribution.²⁴

10 The Act prohibits corporations from making contributions to federal political
11 committees.²⁵ Likewise, candidates and political committees are prohibited from knowingly
12 receiving corporate contributions.²⁶ A contribution is defined to include any gift, subscription,
13 loan, advance, or deposit of money or anything of value made by any person for the purpose of
14 influencing any election for Federal office.²⁷ The term "anything of value" includes in-kind
15 contributions and, generally, the provision of any goods or services without charge or at a charge

²² *Id.* at 3. The Complaint also alleges that SSES provided catering and other event services to the Committee at a rate below the usual and normal costs, *see id.* at 4-6, but provides little more than speculation and thus, the available information does not support a reason to believe finding as to this allegation.

²³ Joint Resp. at 1; SSES Resp. at 3. None of the Respondents provided a copy of the lease agreement between the Committee and SSES to the Commission.

²⁴ Joint Resp. at 4.

²⁵ 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); 11 C.F.R. § 114.2(b).

²⁶ 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); 11 C.F.R. § 114.2(d).

²⁷ 52 U.S.C. § 30101(8)(A) (formerly 2 U.S.C. § 431(8)(A)).

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1 that is less than the usual and normal charge for such goods or services is a contribution.²⁸ The
2 amount of the in-kind contribution would be the difference between the usual and normal charge
3 for the goods or services and the amount charged the political committee.²⁹ The usual and
4 normal charge for goods means the price of those goods in the market from which they ordinarily
5 would have been purchased at the time of the contribution.³⁰ The usual and normal charge for
6 services means the hourly, piecework charge for the services at a commercially reasonable rate
7 prevailing at the time the services were rendered.³¹ The Act also requires political committees to
8 disclose the receipt of contributions.³²

9 The central question in determining whether the Committee received an in-kind
10 contribution from SSES is whether the Committee paid less than the usual and normal charge for
11 leasing the motor coach. The Complaint and the responses provide conflicting estimates of the
12 usual and normal charge for leasing a motor coach comparable to the one leased by the
13 Committee. Complainant provides information indicating that the typical rental rate is \$1,500 to
14 \$2,000 for a similarly-sized motor coach, while Respondents assert that the rental rate that they
15 paid — \$380 per day plus the cost of fuel — was an amount equivalent to the usual and normal
16 amount for a comparable eleven year-old motor coach with assertedly limited features and
17 amenities.³³ Thus, the results of a usual and normal charge analysis based solely on the number

²⁸ 11 C.F.R. § 100.52(d)(1); *see also* 11 C.F.R. § 100.93.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)).

³³ As noted previously, the joint response cites MURs 6295/6307 (Sue Lowden) in support of its assertion that an older vehicle justifies paying a lower, discounted lease price. In the Lowden matter, the owners of the vehicle, private individuals, purchased a 10 year-old motor home in need of repairs and two months later offered the

1 of days that the Committee actively used the motor coach varies drastically depending on which
2 of the two estimates is used. Because the available information does not support one estimate
3 over the other,³⁴ it is unclear which daily rate more accurately represents the usual and normal
4 charge for leasing a motor coach comparable to the one used by the Committee.

5 The Complaint further asserts, however, that the Committee had 24-hour on-call use of
6 the SSES motor coach between September 2013 and June 2014, an assertion that none of the
7 Respondents deny, or address whatsoever. Though Respondents refer to a lease agreement that
8 existed between SSES and the Committee, Respondents have not provided it to the Commission,
9 and do not detail whether the agreement provides for continual exclusive use during the relevant
10 time period. The available information provides some support for the Complaint's assertion that
11 the motor coach was on-call for the Committee's use during this time. It appears that the motor
12 coach remained wrapped with Grimes's campaign logo during the entire lease period even when

Committee the use of their motor home for campaign purposes. Factual and Legal Analysis at 4, MURs 6295/6307 (Sue Lowden). The parties subsequently entered into a lease agreement whereby the Committee agreed to pay a \$95 per day rental rate although it was unclear how the parties arrived at the daily rental rate. *Id.* at 4, 6. The Commission, in support of its dismissal of the matters, cited to specific factors such as the ownership of the leased vehicle by private individuals, the age of the vehicle (10 years old), the length of the lease (10 months) and the fact that that the leased vehicle was in need of substantial capital improvements which the Committee made and apparently set off against amounts it owed to the lessors and which inured to the owners of the vehicle. *Id.* at 6. A noteworthy difference, however, between MURs 6295/6307 and the present matter is that the Lowden Committee appears to have paid for every day it had access to the motor home, while Alison for Kentucky appears to have paid only for the days it actually used the vehicle it leased from SSES. In addition, respondents in the Lowden matters provided a copy of the lease agreement, allowing a fuller assessment of the arrangement (although it did not provide an explanation for how they arrived at the \$95 daily rental rate) while the respondents in the present matter have not done so.

³⁴ Despite Respondents' assertions that the SSES motor coach contained fewer amenities than newer models, Respondents have not provided specific information regarding the amenities and features contained in the SSES motor coach as a means of supporting the assertion, other than its ability to accommodate ten passengers. In addition, the Respondents have not provided any photographs of the interior of the motor coach for comparison purposes. The Complaint cites to a press article claiming that the SSES motor coach has two cabins and is 45 feet long. See Compl., Ex. E (Jacqueline Pitts, *Campaign Bus Controversy Continues as Lundergan's Company Responds to an Online Inquiry "Don't Do Transportation,"* CN2 Pure Politics (Aug. 20, 2014)).

1 not in use by the Committee,³⁵ which would presumably prevent SSES from using the motor
2 coach for other purposes during this time period, including leasing it to other parties. Further,
3 SSES stated that the motor coach would continue to be available for lease as part of EDS's fleet
4 *upon conclusion* of the lease with the Committee, implying that during the Committee's lease
5 period, it was not available for other uses.³⁶

6 If the Committee had exclusive use of the wrapped motor coach during the entire lease
7 period, but only paid for it when the Committee was actively utilizing it, the Committee received
8 an added benefit without charge.³⁷ Based on the available information, it appears that the
9 Committee may have had exclusive access to the motor coach, and further, based on the total
10 amount that the Committee paid to SSES for use of the motor coach, that the Committee
11 compensated SSES only for those days on which the bus was actively being used by the
12 campaign.

13 In sum, there appears to be reason to believe that the benefit allegedly received by the
14 Committee — on-call availability of a wrapped vehicle over the course of several months while
15 the Committee paid only for the days it used the vehicle — may have exceeded the price paid by
16 the Committee. The difference between the service provided and the price paid would be an in-
17 kind contribution from SSES to the Committee.³⁸ Accordingly, we recommend that the
18 Commission find reason to believe that SSES made, and the Committee accepted, a prohibited
19 in-kind corporate contribution, and that the Committee failed to disclose the receipt of that in-

³⁵ The Committee's disclosure reports do not suggest that the Committee paid to have the motor coach wrapped more than once during the course of the Committee's lease.

³⁶ SSES Resp. at 2.

³⁷ See *supra* n.33.

³⁸ See 11 C.F.R. § 100.52(d).

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1 kind contribution in violation of the Act and Commission regulations. We further recommend
2 that the Commission take no action at this time as to the candidate, Grimes, pending the outcome
3 of the investigation.

4 IV. INVESTIGATION PLAN

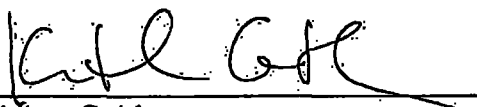
5 We propose to investigate the arrangement between SSES and the Committee regarding
6 the motor coach. We will seek a copy of the lease agreement and information regarding the
7 motor coach, its use by the Committee and its status when not in use by the Committee to
8 ascertain whether the Committee paid fair market value. The information may be available
9 through informal, cooperative means. If it is not, however, formal means of discovery may be
10 necessary to obtain the relevant information from the Respondents or others. We therefore
11 recommend that the Commission authorize the use of compulsory process.


12 V. RECOMMENDATIONS


- 13 1. Find reason to believe that S.R. Holding Co. Inc., d/b/a Signature Special Event
14 Services violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) and
15 11 C.F.R. § 114.2(b) by making a prohibited in-kind corporate contribution.
16
- 17 2. Find reason to believe that Alison for Kentucky and Robert C. Stilz III in his
18 official capacity as treasurer violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C.
19 § 441b(a)) and 11 C.F.R. § 114.2(d) by receiving a prohibited in-kind corporate
20 contribution.
21
- 22 3. Find reason to believe that Alison for Kentucky and Robert C. Stilz III in his
23 official capacity as treasurer violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C.
24 § 434(b)) by failing to accurately disclose the receipt of an in-kind contribution.
25
- 26 4. Take no action at this time regarding Alison Lundergan Grimes.
27
- 28 5. Approve the attached Factual and Legal Analyses.
29
- 30 6. Authorize the use of compulsory process.
31

7. Approve the appropriate letters.

Dated: 3/6/15


Kathleen Guith
Deputy Associate General Counsel for
Enforcement


Mark Allen
Acting Assistant General Counsel

 by MA
Kimberly D. Hart
Staff Attorney

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